

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into the programs, practices and policies related to implementation of the California Environmental Quality Act as it applies to jurisdictional telecommunications utilities.

Rulemaking 00-02-003

**REPLY COMMENTS OF THE  
DIVISION OF RATEPAYER ADVOCATES ON THE ASSIGNED  
COMMISSIONER RULING PROPOSING A CEQA EXPEDITED  
TREATMENT PROCESS FOR TELECOMMUNICATIONS UTILITIES**

In accordance with Rule 77.6(c) of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure, the Division of Ratepayer Advocates submit Reply Comments on the Assigned Commissioner Ruling (ACR) Proposing a CEQA Expedited Treatment Process (ETP) for Telecommunications Utilities. Silence on a particular issue should not be construed as agreement with the positions of any party.

**I. INTRODUCTION**

DRA supports the Commission's laudable initiative to institute a more uniform set of CEQA review standards and guidelines for all telecommunications carriers serving in California. Eliminating disparities, and implementing greater efficiency and standardization in the CEQA permitting process is a critical step forward in the Commission's ongoing efforts to promote competitive and technological neutrality. While many parties claim that the Commission's proposed Expedited Treatment Process (ETP) would not ensure the fulfillment of these objectives, DRA believes that the ETP,

with some clarification and amendments, would be an appropriate regulatory vehicle with which to reach these ends. In particular, the Commission should clarify how its proposed modifications to the CEQA construction permitting process apply to each class of carrier, and avoid promoting unnecessarily burdensome requirements wherever possible. DRA recommends that the Commission convene a technical workshop<sup>1</sup> and issue a report followed by an additional round of Comments in order to address these and other relevant concerns articulated by parties. This would efficiently allow the Commission and the parties to move forward on this promising Commission initiative, which has the potential to benefit ratepayers by encouraging investment in facilities deployment.

## **II. DISCUSSION**

### **A. CONTRARY TO SOME PARTIES' ASSERTIONS, THE PROPOSED ETP WOULD INCREASE COMPETITIVE AND TECHNOLOGICAL NEUTRALITY.**

#### **1. Some parties overstate the potential flaws in the Brown ETP proposal.**

AT&T, Verizon, Edison, and other parties assert that the reporting requirements of the ETP for any CEQA-exempt project of any size would be overly burdensome for carriers and the Commission, thereby creating the very inefficiencies the Commission seeks to avoid.<sup>2</sup> Edison claims that “given the number of ILECs and CLECs currently operating in California and the highly competitive nature of the State’s telecommunications marketplaces...it is not an understatement to estimate that hundreds – if not thousands – of CEQA-exempt projects occur in California every year.”<sup>3</sup> Among other parties, Edison points out the potential for CEQA review backlog at the Commission’s Energy Division, expressing concern that Commissioner Brown’s ETP proposal fails to take these resource constraints into account.

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<sup>1</sup> In this, DRA supports the recommendation of Level 3. Comments of Level 3 Communications, Inc. to Assigned Commissioners Ruling (Level 3 Comments), May 12, 2006, at 5.

<sup>2</sup> Comments of Southern California Edison Company (U 338-E) on the Proposal for CEQA Expedited Treatment for Telecommunications (SCE Comments), May 12, 2006, at 3-4.

<sup>3</sup> SCE Comments at 7.

While DRA agrees that the Brown ETP proposal could benefit from further refinements to ensure program efficiency and Commission resource adequacy, the incentive for incumbent telecommunications and electricity providers to overstate these problems should be recognized. AT&T claims that, contrary to its objective, the ETP would actually further imbalance the playing field in that it would deepen the divide between the reporting requirements of regulated and unregulated services.<sup>4</sup> Furthermore, AT&T presumes broadband providers will not be subject to the proposed rules when building out networks for the purposes of provisioning VoIP, now considered to be an interstate service.<sup>5</sup> However, while these services have been deemed inherently interstate, and therefore subject to FCC jurisdiction, this does not exempt these carriers' construction projects within California from CEQA review.

## **2. Concerns about disparities in facilities and regulatory treatment.**

On the other hand, Level 3 asserts that the ETP proposal will result in “significant delays in construction for several wireline telecommunications carriers but not wireless carriers or ILECs” since the Commission currently does not regard the replacement of existing infrastructure by electric utilities as construction activity that triggers CEQA.<sup>6</sup> There is some merit to this concern inasmuch as incumbents may be able to avoid substantial CEQA review; given that the bulk of their networks are already in place, they generally require only upgrades, maintenance, and repair of existing facilities. DRA also notes that it might be of some value for the Commission to more clearly define the scope of the terms “project” and “construction” in order to clarify the comprehensive list of relevant activities requiring CEQA oversight. The Commission should address these issues in workshops to more fully explore the respective CEQA permitting requirements for infrastructure expansion and replacement.

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<sup>4</sup> Comments of AT&T California on Assigned Commissioner's Ruling Requesting Comments Dated April 26, 2006 (AT&T Comments), May 12, 2006, at 5-8.

<sup>5</sup> AT&T Comments at 7.

<sup>6</sup> Level 3 Comments at 2.

**B. ANY ADOPTED CEQA REFORMS MUST APPLY TO ALL CARRIERS REGARDLESS OF VINTAGE OF CPCN.**

In order to successfully achieve the objectives of the ACR, any CEQA reform must apply to all carriers regardless of the vintage of their CPCN. AT&T recommends that local telecommunications projects be “assessed under local permitting, as they have been historically.” However, local jurisdictions' review processes and permitting conditions can vary depending on the type of CPCN. Additionally, AT&T's recommendation would insulate it from additional CEQA scrutiny as the majority of its network is built, and therefore the need for environmental review of its replacements or additions to its wireline facilities is by and large moot.<sup>7</sup> Thus, given that AT&T currently enjoys a regulatory advantage over competitive carriers with respect to CEQA Review, it naturally opposes the imposition of standardized CEQA requirements. The Commission should therefore not be swayed by the arguments of the ILECs and proceed with issuing reforms that will apply to all carriers regardless of the vintage of their CPCN in order to promote competitive neutrality and increase ratepayer choice.

**C. THE ATTORNEY GENERAL'S (AG) OFFICE CORRECTLY RECOGNIZES THE STRENGTHS AND POTENTIAL WEAKNESSES OF THE ACR'S ETP PROPOSAL.**

DRA shares the concerns expressed by the AG regarding the ETP's potential for “piecemeal consideration of projects that should be reviewed together, as a whole.”<sup>8</sup> The AG raises a relevant concern that the ETP in its current form would seem to implicitly favor expedited approval of single short-term network expansion projects. A piecemeal approach to CEQA review of a series of small related projects could collectively have significant environmental impacts. Although the ETP recognizes the cumulative impact provision, the proposal might not adequately mitigate the potential for environmental risk in successive small expansion projects. DRA also agrees with the AG that a clarified and amended ETP proposal that mitigates this risk and which would result in an efficient,

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<sup>7</sup> AT&T's Project Lightspeed would require CEQA review.

<sup>8</sup> Comments of the California Attorney General in Response to Assigned Commissioner's Ruling Requesting Comments (AG Comments), May 12, 2006, at 2.

standardized review process would lead to a more equitable application of CEQA review in the telecommunications market.

### **III. CONCLUSION**

While the ETP proposal has the potential to eliminate disparities in the CEQA review process, and thereby encourage investment in facilities and provide consumers with more service options, some clarification of the proposal is necessary. The Commission should therefore convene workshops, issue a report, and allow parties an additional round of comments on that report in order to address any concerns of parties and to ensure that the ETP's potential benefits are realized.

Respectfully submitted,

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